



## FISCAL MEMORANDUM

### HB 233 - SB 562

April 12, 2022

**SUMMARY OF BILL AS AMENDED (016731, 017095):** Establishes common law marriage in the state. Requires a man and a woman who have both attained the age of majority and have made a marital contract at common law to file a “Record of Marital Contract at Common Law” (RMCCCL) with the county clerk in the county in which one of the parties resides. Prescribes the information the record must contain, including each party’s Social Security number. Specifies that failure to record an RMCCCL is not determinative of whether a marital contract at common law exists and the existence and validity of a marital contract at common law is not dependent upon the act of submitting notice or of the state receiving and recording the notice.

Requires the Office of Vital Records (OVR) to:

- Develop an RMCCCL form and post it on its website for use by the general public;
- Distribute copies of the form to each county clerk’s office in the state; and
- Provide a certified copy of the record upon request by one of the parties to the RMCCCL, which the OVR may charge a fee to cover any administrative costs.

Authorizes a county clerk to record an RMCCCL and requires a county clerk to forward any RMCCCL to OVR, on or before the tenth day of each calendar month, to be filed and registered. Imposes a \$15 tax and authorizes a \$5 privilege tax and \$10 service fee on each RMCCCL filed. Provides that an RMCCCL executed outside of this state will be recognized by the state if one of the parties was a resident of this state. Prohibits a cause of action for civil or criminal liability from being brought against a county clerk who in good faith complies with the proposed legislation.

Establishes that certain records maintained or stored by the OVR are considered public record and verified information from such documents may be provided upon request. Includes RMCCCLs to the documents that a county public records commission has the right to authorize lamination of in order to be permanently preserved.

Authorizes a person to contest the recording of an RMCCCL in the county where the RMCCCL was filed. The petition of contest must be accompanied by a cost bond of at least \$50 and all court costs must be adjudged against the losing party.

Specifies that an RMCCCL is not conclusive proof of a marital contract.

## **FISCAL IMPACT OF BILL AS AMENDED:**

### **Increase State Revenue –**

**\$4,000/FY22-23 and Subsequent Years/Department of Health**  
**\$40,300/FY22-23 and Subsequent Years/General Fund**

### **Increase State Expenditures – \$30,000/FY22-23/General Fund**

### **Increase Local Revenue – \$40,300/FY22-23 and Subsequent Years**

Assumptions for the bill as amended:

- Common law marriage is legal in the following states: Colorado, Iowa, Kansas, Montana, New Hampshire (only posthumously, for inheritance purposes), Oklahoma (couples must get a marriage license but case law has upheld common law marriages in the state), Texas, and Utah.
- States that recognize common law marriage, but no longer allow it, include: Pennsylvania, Ohio, Indiana, Georgia, Florida, Alabama, and South Carolina.
- As common law marriage does not usually require documentation, it is difficult to estimate the number of common law marriages in each state.
- According to the Department of Health, from 2017 to 2019 there were 161,174 marriage certificates filed for an average of 53,725 (161,174 / 3) annually. This figure is estimated to remain relatively constant.
- It is assumed that the proposed legislation will not result in a significant increase of couples foregoing a marriage license and, therefore, will not impact the number of marriage certificates filed annually.
- For the purpose of this analysis, it is estimated that the proposed legislation will increase the number of filed marriage records by five percent, or 2,686 (5% x 53,725).
- The proposed legislation would require the OVR to develop an RMCCL form and provide certified copies of the record, upon request.
- Based on information provided by the Department of Health,
  - There will be an increase to state expenditures of \$30,000 for development of the RMCCL form within the Tennessee Vital Records Information System Management in FY22-23.
  - The OVR will charge \$15 for certified copies, which is the amount charged for copies of other vital records.
  - It can reasonably be assumed that a certified copy will be requested for ten percent, or 269 (10% x 2,686) of RMCCLs.
  - There will be an increase of state revenue to the Department of Health of \$4,035 (\$15 x 269) in FY22-23 and subsequent years.
- Pursuant to § 67-4-411(a), the county clerk is required to collect and forward to the Department of Revenue (DOR) to be deposited to the General Fund a tax of \$15 for each marriage license issued. The proposed legislation extends this tax to RMCCLs.
- There will be an increase in state revenue to the General Fund of \$40,290 (\$15 x 2,686) in FY22-23 and subsequent years.

- Pursuant to Tenn. Code Ann. §§ 67-4-505 and 8-21-701, locals are authorized to charge a \$5 privilege tax on marriage licenses, to be used for schools, and county clerks are authorized to charge a \$10 service fee for issuance of a marriage license. The proposed legislation extends these authorizations to RMCCLs.
- There will be a recurring increase to local revenue of \$40,290  $[(\$5 + \$10) \times 2,686]$ , beginning in FY 22-23.
- Based on information provided by the Administrative Office of the Courts, any increase in caseload to the trial courts as a result of the proposed legislation can be absorbed within existing resources; therefore, any impact to the court system is estimated to be not significant.
- Any petition of request will occur between private parties and, therefore, will not have any significant impact to state or local government.
- Based on information provided by the Department of Finance and Administration, any impact resulting from the proposed legislation to the State Insurance Group Program is estimated to be negligible and, therefore, not significant.
- According to TennCare, TennCare accepts self-attestation of marital relationships and, as stated in policy, the concept of a holding out relationship (i.e., common law marriage) does not apply to TennCare's programs, so there is no impact to TennCare.
- Authorizing a county public records commission to authorize lamination of RMCCLs for preservation will not result in any significant impact to local government expenditures.
- It is estimated that the proposed legislation will result in an increase of duties by five percent to county clerks. It is assumed that these additional duties can be absorbed utilizing existing staff and resources, and therefore, any increase to local expenditures is considered not significant.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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